

United States Court of Appeals
For the Eighth Circuit

No. 17-1378

United States of America

Plaintiff - Appellee

v.

Markell Jay Hamilton, also known as Poo

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: December 11, 2017

Filed: January 25, 2018

[Unpublished]

Before LOKEN, MURPHY, and SHEPHERD, Circuit Judges.

PER CURIAM.

Markell Hamilton directly appeals after the he pled guilty to a drug charge, and the district court sentenced him to an above-Guidelines-range prison term. His counsel has moved for leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967). Hamilton has filed a pro se brief, arguing, as relevant, that the district court plainly erred in calculating his criminal history score

by including his Illinois conviction for aggravated unlawful use of a weapon, because a portion of the relevant statute had been ruled unconstitutional by the Illinois Supreme Court and the Seventh Circuit.

After careful review of the record and the parties' arguments on appeal, we vacate Hamilton's sentence and remand for resentencing for the district court to consider Hamilton's criminal-history argument in the first instance. We express no opinion as to the merits of this argument, and we note that it is unclear from the record whether Hamilton was convicted under a portion of the statute that has been ruled unconstitutional. Counsel's motion to withdraw is denied.
